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## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **45 CFR Part 155**

**[CMS-9957-CN; 9964-CN]**

**RIN 0938-AR82; RIN 0938-AR74**

### **Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects an error that appeared in the final rule published in the **Federal Register** on October 30, 2013 entitled, “Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014.”

**EFFECTIVE DATE:** December 30, 2013.

#### **FOR FURTHER INFORMATION CONTACT:**

Scott Dafflitto (301) 492-4198.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In FR Doc. 2013-25326 of October 30, 2013 (78 FR 65046), final rule entitled "Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014 (78 FR 65046), there was a technical

nonconformity that is identified and corrected in the regulations text of this correction notice. This correction is effective December 30, 2013, just as if it had been included in the document published on October 30, 2013.

The October 30, 2013 final rule implements provisions of the Patient Protection and Affordable Care Act (Pub. L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152) (collectively referred to as the Affordable Care Act). In relevant part, the October 30, 2013 final rule establishes standards, at 45 CFR part 155, subpart M, that require State Exchanges to submit certain reports to the Department of Health and Human Services (HHS) and to undertake certain recordkeeping and self-auditing activities to ensure compliance with Federal requirements, such as those governing eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions. The standards established at subpart M enable HHS to carry out its responsibility of ensuring that Federal funds are used appropriately in the administration of State Exchange activities.

## **II. Summary of Error**

On page 65095, in the **Federal Register** of October 30, 2013, we added subpart M “Oversight and Program Integrity Standards for State Exchanges” to the regulations text at 45 CFR part 155. While it was clear from the preamble and regulations text that subpart M applies to all Exchanges, including small business health options program (SHOP) Exchanges, due to an oversight we inadvertently omitted cross-referencing new subpart M at §155.705(a) of the regulations in part 155, subpart H—Exchange Functions: Small Business Health Options Program. Accordingly, we are revising §155.705(a) so that the regulations in part 155 consistently reflect our policy that all Exchanges,

including SHOP Exchanges, must carry out the required functions of an Exchange that are set forth at subpart M. We are correcting §155.705(a) by adding a cross reference to subpart M, so that the provision reads, “Exchange functions that apply to SHOP”. The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, K, and M of this part, except: ....”

### **III. Waiver of Proposed Rulemaking and Delay in Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect, in accordance with section 553(b) and (c) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b) & (c)). However, we can waive notice and comment if the Secretary finds, for good cause, that notice and comment would be impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefor in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in the effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if the Secretary finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the findings and the reasons therefor in the rule issued.

It was clear from both the preamble and the regulations text for 45 CFR part 155, subpart M, that subpart M applies to all Exchanges, including SHOP Exchanges. Both the preamble and the regulations text for part 155, subpart M use the term “Exchange” when describing the new requirements. The term “Exchange” is defined at §155.20 as including SHOP Exchanges. In relevant part, the definition of “Exchange” in §155.20

states: “Unless otherwise identified, this term includes an Exchange serving the individual market for qualified individuals and a SHOP serving the small group market for qualified employers . . . .” This conforming amendment merely corrects a technical nonconformity in the regulations text so that the regulations consistently reflect the policy adopted in the October 30, 2013 final rule. Therefore, we find that undertaking further notice and comment before this correction is incorporated into the final rule is unnecessary.

For the same reasons, we also find good cause to waive the 30-day delay in effective date.

#### **IV. Correction of Errors**

On page 65095, in the third column, after the regulations text for §155.420--Special enrollment periods, insert the following amendment to §155.705-Functions of a SHOP to read as follows:

##### **§155.705 [Corrected]**

26a. Section 155.705 is amended by revising paragraph (a) introductory text to read as follows:

##### **§155.705 Functions of a SHOP.**

(a) Exchange functions that apply to SHOP. The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, K, and M of this part, except:

\* \* \* \* \*

Dated: December 23, 2013.

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Oliver Potts,

Deputy Executive Secretary to the  
Department,

Department of Health and Human  
Services.

**BILLING CODE 4120-01-P**

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